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Summary record of the 8th meeting
Held at Headquarters, New York, on Monday, 16 October 2000, at 3 p.m.

Chairman: Mr. Politi ..... (Italy)

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00-69252 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 154: Progressive development of the principles and norms of international law relating to the new international economic order

1. **Ms. Álvarez Núñez** (Cuba), reviewing the history of the agenda item, said that her delegation had been one of the sponsors of General Assembly resolution 46/52. In that resolution, the Assembly had recognized that the impact of the international economic situation on the developing countries should be analysed and had established a working group of the Sixth Committee for that purpose. Her delegation remained convinced of the importance of the item and supported its retention in the Committee's agenda.

2. The existing international economic order was cruel, unjust and unsustainable and required immediate action by the United Nations. The need for an international economic order based on just and rational norms was a challenge that must be faced if the Organization was to fulfil its commitments in the new millennium.

3. In the Millennium Declaration, the heads of State and Government had recognized that the fundamental task before them was to transform globalization into a positive force for all of the world's people, so that both its benefits and its costs would be shared equitably. That would require an open and transparent multilateral trading and financial system based on predictable and non-discriminatory rules.

4. At its ministerial meeting held in Cartagena in April, the Movement of Non-Aligned Countries had reaffirmed the need to establish such a system, as had the Group of 77 in Havana that same month.

5. Development was the best contribution to peace. The underlying causes of current conflicts were poverty and underdevelopment in the vast majority of countries and the unequal distribution of wealth and knowledge around the world. It was sufficient to recall that 80 per cent of the world's 6 billion people were poor.

6. The Committee's work could be revitalized through future consideration of the item. It would be very useful to request Member States and competent international organizations, including the United Nations regional commissions, to submit proposals and comments on the item and to request the Secretary-General to prepare a report summarizing those proposals.

7. **Mr. Su** Wei (China) said that while the current trend towards a globalized economy based on science and technology had given rise to new opportunities for economic development in all countries, there was a need for a fundamental transformation of the unjust and irrational international economic order. Scientific and technological progress and economic globalization had yet to benefit all countries of the world. Many developing countries were trapped in ever-increasing poverty, with a heavy debt burden severely hampering their development efforts. The gap between the North and the South and between the rich and the poor was continuing to widen. While the developed nations accounted for 86 per cent of the gross world product and 82 per cent of the export market, the developing countries, with an overwhelming majority of the world's population, accounted for a mere 14 per cent and 18 per cent, respectively. There were 1.3 billion people in the world living in conditions of abject poverty, particularly in the developing countries. Without fundamental change, not only would the developing countries be unable to keep up with the development of the world economy, but the developed countries would be unable to insulate themselves from the resulting turbulence.

8. His delegation believed, first, that the Committee's consideration of the item should reflect the common interests of the peoples of the world. Second, it should adhere to the purposes and principles of the Charter of the United Nations and other universally recognized norms of international relations. Third, it should respect the independent right of countries to choose their social systems and development paths. Fourth, consideration of the item should reformulate the international legal system and the principles of international law to bring them into line with the aforesaid requirements. Fifth, the Committee should encourage extensive participation by the developing countries in its deliberations on an equal footing. His delegation supported the Cuban proposal that the Secretary-General should be requested to provide background information on the item.

Agenda item 165: Review of the Statute of the United Nations Administrative Tribunal

9. **Ms. Burnett** (United Kingdom) said that useful and substantive consultations had been held on the item at the previous session of the General Assembly. The Committee had considered a number of proposals put forward by her delegation, relating to the nature of the Tribunal, whether it should be considered a court, the qualifications of its members, their terms of office and various technical updates to its Statute.

10. Based on those discussions, her delegation had circulated at the current meeting a revised version of draft resolution A/C.6/54/L.13/Rev.1, prepared with the delegations of Ireland and France. The sponsors had agreed that the amendments should be technical in nature and that the Committee should proceed by consensus. Proposals which did not appear to enjoy the necessary consensus had not been included. Accordingly, the sponsors had not laid down precise qualifications for the appointment of members of the Tribunal; reference had simply been made to the need for them to have the requisite qualifications and experience. That left room for the possibility that appointees with no legal experience but with wide experience within the United Nations system would not be excluded from membership of the Tribunal.

11. During the preparation of the text the sponsors' attention had been drawn to a report by the Joint Inspection Unit on the administration of justice at the United Nations (A/55/57). That report also made various comments on the work of the Tribunal. It drew attention to a number of issues which affected the Tribunal but could not be considered in isolation from other United Nations bodies, such as possible rights for appeal. While the sponsors did not believe that the detailed consideration which might need to be given to those matters in the future should stand in the way of the adoption of the draft resolution, they suggested that the item should be included in the Committee's agenda at a future date, perhaps during the fifty-seventh session.

12. The sponsors hoped that the draft resolution would be adopted by consensus.

13. **Mr. Alabrune** (France) said that the Tribunal had become a fully fledged jurisdiction which took due account of the contributions made by different legal systems. The extension of its competence decided by the fifty-second General Assembly testified to the degree of confidence it enjoyed among Member States and the staff of the Secretariat. Its functioning should now be improved by reinforcing its position within the United Nations system. The draft resolution to that effect sponsored by the delegations of France, Ireland and the United Kingdom reflected the observations made at the Committee's previous session on the original proposal by those delegations, moderating somewhat the reach of the original. The proposed extension of the term of office of the members of the Tribunal from three to four years was intended to enable members to take full advantage of the experience gained at the beginning of their term. The proposed new article 8 would make provision for cases involving difficult questions of law, by allowing the three Tribunal members sitting in such a case to refer it to the whole Tribunal. The sponsors of the draft resolution intended the Statute of the Tribunal to be reviewed at the fifty-seventh session of the General Assembly.

14. **Mr. Fomba** (Mali) said that his delegation had no difficulty with the drafters' proposal to increase the term of office of members of the Tribunal from three to four years and to limit them to two terms.

15. The proposed new article 8 was an improvement over existing paragraph 1 of article 3 of the Statute, which stated that "Only three shall sit in any particular case". It represented a better organization of work and greater security for the Tribunal's decisions. While his delegation had no difficulties as to the substance, it believed that the drafting of the text could be improved.

16. **Mr. Kanu** (Sierra Leone) recalled that his delegation had expressed concern about the amendments of the Tribunal's Statute originally proposed by the United Kingdom. In the view of his delegation, the Tribunal was a quasi-judicial body and should not be given all the trappings of a court. He could, however, support the new version of the resolution proposed by the United Kingdom.

17. **Mr. Gupta** (India) said that the Tribunal was a necessary and valuable part of the United Nations system. Since disputes to which the United Nations was a party could not be submitted to a national court without affecting its independence and immunity, the option of recourse to the Tribunal ensured that its staff members were not deprived of the judicial guarantees conferred by most national legal systems on their civil

servants. The Tribunal had issued over 900 judgements since 1949. It had won the confidence of both the staff and the administration, as was evident from the increasing number of cases brought to it and the acceptance and implementation of its judgements. Evidently, Member States also trusted it, since they had decided in General Assembly resolution 50/54 to delete the provision in article 11 of its Statute that an advisory opinion concerning the validity of its judgements could be requested of the International Court of Justice. Moreover, the Court had itself decided that the Tribunal should be competent to hear appeals from its own staff members.

18. He welcomed the proposal submitted by the delegations of France, Ireland and the United Kingdom with a view to enhancing the judicial standing of the Tribunal. The Tribunal was increasingly called upon to deal with complex legal issues, and it was therefore appropriate that its members should possess the requisite qualifications and experience. Increasing the present three-year term of office to four years would also allow members to become fully familiar with the functioning of the Tribunal while providing for greater continuity. The Tribunal's authority would be enhanced by the proposed new article 8, allowing for cases involving significant questions of law to be referred to the whole Tribunal.

19. **Ms. Álvarez Núñez** (Cuba) said that the increasing volume of work handled by the Tribunal was a logical consequence of the complexity of tasks now required of the staff of the United Nations. The review of its Statute was part of the process of reform within the Organization. Amendments made to the Statute should strengthen the institutional safeguards and guarantee an equitable, efficient and swift system of remedies. The draft resolution before the Committee was phrased in neutral terms and was an improvement over the one submitted at the previous session. The recommendations concerning the required qualifications of members of the Tribunal were acceptable, and indeed they matched recommendation 3 (b) of the report of the Joint Inspection Unit on the administration of justice in the United Nations (A/55/57). However, her delegation insisted that the members of the Tribunal should be elected according to the principle of geographical distribution.

20. Moreover, the review of the Statute should be treated as a gradual process. Recommendation 3 (a) of the JIU report, which proposed amending article 9 of the Statute to eliminate the existing restrictions on the Tribunal's authority, should be considered in detail by Member States. Recommendation 3 (c) should be considered by the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee, since it was not within the remit of the Sixth Committee.

21. **Mr. Obeid** (Syrian Arab Republic) welcomed the opportunity to discuss the proposed amendments to the Statute of the Tribunal. The amendments proposed at the previous session had been discussed during informal consultations, and he wondered whether there would be a similar opportunity during the present session. He recalled that the principle of equitable geographical distribution of the Tribunal's membership had previously been accepted by all delegations. It would also be desirable, when discussing the proposed increase in the number of judges, to ensure representation of all the legal systems of the world, and thereby a better understanding of the legal issues which arose at the Tribunal.

22. **Mr. Ekedede** (Nigeria) recalled that in the debate on the review of the Tribunal's Statute at the previous session, his delegation had expressed concern at the attempt to introduce radical changes into the structure of the Tribunal, and to alter its quasi-judicial character by turning it into a fully fledged court. His delegation did not feel ready for such a move, and the motivation behind it was not clear. Fortunately, those concerns were reflected in the new draft resolution, which he was glad to support. However, he agreed with the representative of Cuba that the principle of equitable geographical distribution should apply to the membership of the Tribunal, in order to reflect the views of the developing countries.

23. **Mr. Lavalle-Valdé** (Guatemala) found the new proposal acceptable. He would however suggest including, after the word "judgement" in the proposed new article 8, the words "but not before submission of the last written pleading". Only when the written stages had been completed could the Tribunal properly decide that the case merited examination by a larger panel. The last sentence of article 8 should read "The quorum for a meeting or hearing by the whole Tribunal shall be five members". Lastly, to ensure that the three judges originally dealing with the case would continue until it was finished, he suggested inserting after the words "five members" a form of words akin to "including as

far as possible the members of the panel that initially dealt with the case".

24. **The Chairman**, drawing the debate to a close, said that the delegation of the United Kingdom was prepared to coordinate further work on the draft resolution. Informal consultations could be held if needed, as requested by the representative of the Syrian Arab Republic.

Agenda item 163: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/55/293 and Add.1; A/C.6/55/L.3)

25. **Mr. Panevkin** (Russian Federation), introducing the draft resolution sponsored by Bulgaria, the Russian Federation and Ukraine (A/C.6/55/L.3), said that the effect of sanctions on third countries had been discussed in the Committee's meetings of 11 to 13 October and at the recent session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. There had been a number of recent developments in the matter of sanctions, which did not however detract from the significance of earlier work on the topic. The present draft resolution was based on General Assembly resolution 54/107, which had been adopted by consensus. It also reflected the section on sanctions, in relation to article 50 of the Charter of the United Nations, in the annual overview reports of the Administrative Committee on Coordination; the references to humanitarian assistance in General Assembly resolution 54/96 G; the report of the Secretary-General to the Millennium Summit and the Millennium Declaration; measures taken by the Security Council to improve the work of the sanctions committees; and recent progress on the topic of sanctions within the Economic and Social Council. He drew attention to subparagraphs (f), (j) and (k) of the fourth preambular paragraph and to operative paragraphs 2, 5, 7 and 9. Paragraph 10 proposed the establishment of a working group of the Sixth Committee, during the fifty-sixth session of the General Assembly, to consider further progress in the elaboration of effective measures to implement the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII. He hoped the Bureau of the Committee would support the draft resolution and that the Committee would discuss it in a constructive spirit.

The meeting rose at 4.20 p.m.

United Nations A/C.6/55/SR.9

General Assembly
Fifty-fifth session

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Sixth Committee

Summary record of the 9th meeting
Held at Headquarters, New York, on Wednesday, 18 October 2000, at 10 a.m.

Chairman: Mr. Politi ..... (Italy)

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Agenda item 162: Establishment of the International Criminal Court

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00-69667 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 162: Establishment of the International Criminal Court (PCNICC/2000/L.1/Rev.1 and Add.1 and Add.2, PCNICC/2000/L.3/Rev.1, PCNICC/2000/INF/3 and Add.1 and Add.2)

1. **Mr. Corell** (Under-Secretary-General for Legal Affairs, The Legal Counsel) summarized paragraphs 3, 4, 5, 6 and 8 of General Assembly resolution 54/105 of 9 December 1999 and said that notwithstanding financial constraints, the Secretariat had been able to provide the required services for the two sessions of the Preparatory Commission for the International Criminal Court, held in March and June 2000, and was prepared to do so again during the forthcoming session to be held from 27 November to 8 December 2000. Those services had included assistance to the Commission and its Bureau and the interpretation, translation and reproduction of various documents prepared by delegations, coordinators and the Commission. The proceedings of the fourth and fifth sessions of the Preparatory Commission (PCNICC/2000/L.1/Rev.1 and Add.1 and Add.2 and PCNICC/2000/L.3/Rev.1) and the report of the Preparatory Commission concerning the finalized draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes (PCNICC/2000/INF/3 and Add.1 and Add.2) had been issued in all languages with the linguistic corrections submitted by delegations.

2. With regard to the two trust funds established to facilitate the participation of the least developed countries and other developing countries in the work of the Preparatory Commission, the Secretary-General, in a circular addressed to States, had announced that those interested in making financial contributions should contact the Legal Counsel. The Holy See, Norway and the United Kingdom had made contributions to the trust fund for the least developed countries; as a result, it had been possible to provide round-trip tickets to 21 delegates who had attended the fourth and fifth sessions of the Commission. The Secretariat had received requests for assistance to delegates from least developed countries who wished to attend the forthcoming session. No contributions had been received for the trust fund for other developing countries.

3. Notwithstanding the financial constraints on the Organization and the limited number of staff members in the Codification Division, every effort was being made to expedite preparation of the official records of the Rome Conference.

4. **Mr. Kirsch** (Chairman of the Preparatory Commission for the International Criminal Court) said that the Heads of State and Government who had assembled for the Millennium Summit had emphasized the importance of the Court and that the priority given to that matter by the Secretary-General, the President of the General Assembly, the Legal Counsel and many Governments had contributed to a notable increase in the number of signatures and ratifications of the Rome Statute.

5. The Preparatory Commission had successfully completed the first part of its mandate, including preparation of the draft Rules of Procedure and Evidence and the Elements of Crimes, by the established deadline. It was particularly significant that those instruments had been concluded by general agreement, which had involved difficult compromises for all delegations; that fact demonstrated States' recognition that the Court needed the widest possible support in order to be fully effective.

6. The Commission had considered other important and technically complicated issues such as the definition of the crime of aggression and planning for the next phase of its mandate. Formal and informal meetings had been held, always in a spirit of cooperation; in addition, valuable inter-sessional meetings had been held in Syracuse, Italy, in March 1999, hosted by the International Institute of Higher Studies in Criminal Sciences, and in Mont Tremblant, Canada, in May 2000.

7. The Preparatory Commission would meet once more, from 27 November to 8 December 2000, in order to consider the Relationship Agreement between the Court and the United Nations, the basic principles governing a Headquarters Agreement, the Financial Regulations and Rules, the Agreement on Privileges and Immunities of the Court, a budget for the first financial year and the rules of procedure of the Assembly of States Parties. It would also continue to prepare proposals for a provision on aggression and would discuss ways to enhance the effectiveness and acceptance of the Court.

8. The Bureau of the Preparatory Commission considered that two two-week sessions would be required in 2001 in order to ensure preparation of all

necessary documents before the entry into force of the Statute. In June 2000, the Bureau of the Commission had developed a draft programme of work for the November-December session which would make full use of resources and facilities; in addition, other steps were being taken to ensure that future sessions were organized in as efficient a manner as possible. The Commission would continue to stress the need to establish an effective Court expeditiously, the importance of enhancing universal acceptance of the Court, full respect for the integrity of the Statute and partnership with all States, international organizations and representatives of civil society in order to end impunity and ensure that justice would triumph.

9. **Mr. Alabrune** (France), speaking on behalf of the European Union, Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Malta, Romania, Slovakia and Slovenia, said that the International Criminal Court should be established as soon as possible in order to guarantee effective respect for international humanitarian law and human rights. The Court would be an instrument for dealing with and preventing the worst crimes affecting the international community and would strengthen the primacy of international law, thus contributing to the reign of peace in the world. The Rome Statute gave the Court jurisdiction to try war crimes committed in international and internal armed conflicts, crimes of genocide and crimes against humanity, including massacres of citizens by their own Governments. Above all, it entrusted States with the responsibility for applying international humanitarian law and human rights and sanctioning their violation, it respected the balance among the different legal traditions and insisted on the protection and rights of the victims.

10. The Preparatory Commission had unanimously approved the draft Rules of Procedure and Evidence and the draft Elements of Crimes. Although those documents specified the content of the Statute, they were subordinate to it and should be read in conjunction with it, for they were the product of a willingness to compromise on the part of many delegations.

11. The Preparatory Commission should elaborate the other documents essential to the Court's operation: the financial rules, the administrative agreement between the United Nations and the Court, the principles governing the Headquarters Agreement, the Agreement on Privileges and Immunities and the budget for the first year of operations. A universally acceptable instrument concerning the crime of aggression should also be elaborated. The documents negotiated within the Preparatory Commission did not amend the Rome Statute but merely defined the ways to it and should therefore respect both its letter and its spirit. The European Union was committed to cooperating constructively to find a solution for all the outstanding legal issues.

12. For the Statute to enter into force it would need 60 ratifications. To date, 21 States had ratified it, among them several European Union member States; the rest would soon follow. In all, 114 States had signed the Statute, which was open for signature until the end of the year. The Millennium Assembly had provided a good opportunity for the greatest possible number of States to sign and ratify the Statute. To that end, the European Union offered to share its expertise with States experiencing difficulties in incorporating the Statute into domestic law.

13. After noting that preparations for the establishment of the Court in The Hague in the near future were under way, he thanked all national delegations and many national and international institutions, non-governmental organizations and individuals for their contribution to the framing of the texts adopted by the Preparatory Commission.

14. **Mr. Valdivieso** (Colombia), speaking on behalf of the member States of the Rio Group, reaffirmed the commitment undertaken by the Group in the Cartagena Declaration: adopted in June 2000, to the progressive development of the international law on criminal responsibility for the commission of certain international crimes. The adoption of the Elements of Crimes and the Rules of Procedure and Evidence within the agreed time frame and the fact that 114 States had so far signed the Statute, while 21 — over a third of the number required for its entry into force — had ratified it, provided clear proof of the international community's commitment to the establishment of the International Criminal Court within the shortest possible time. The challenge posed by the impunity of the perpetrators of genocide, crimes against humanity and war crimes, together with the inescapable need to have an instrument that would discourage the commission of such crimes, heightened the need for the establishment of an International Criminal Court.

15. The Rio Group commended the Secretary-General for having identified the Rome Statute as being among the 25 core multilateral instruments whose signature and ratification should be accorded the highest priority by States. The Group pledged to spare no effort to contribute to the elaboration of the instruments necessary for the establishment of the Court. It had participated actively in the first five meetings of the Preparatory Commission and many of its proposals had been included in the texts adopted on 30 June 2000. It would continue to participate in the work of the Preparatory Commission, which should be guided by the commitments given by the international community in the Rome Statute, whose integrity must be preserved at all times.

16. **Mr. Mangoaela** (Lesotho), speaking on behalf of the Southern African Development Community, expressed support for the process of establishing the International Criminal Court. The Rome Statute offered a viable foundation for the establishment of a strong, effective and independent Court. The Community was committed to maintaining the integrity of the Statute and would resist any attempts to introduce substantive amendments. Future documents based on the Statute should not deviate from it. The Community would continue its active participation in the work of the Preparatory Commission in order to attain the goal of early entry into force of the Statute and the establishment of the Court. He urged all States to sign and ratify the Statute as soon as possible. In that context, he noted that most of the members of the Community had signed the Statute and two had ratified it. He commended the Preparatory Commission for having safeguarded the integrity of the Statute and for achieving the adoption by consensus and on schedule of the Elements of Crimes and the Rules of Procedure and Evidence That would facilitate the process of signing and ratifying the Statute and the realization of the goal of its early entry into force.

17. The member States of the Community were engaged in the difficult task of completing their national implementation legislation, to ensure that the International Criminal Court effectively complemented their national jurisdictions. That involved making significant changes to national criminal legislation and procedures, provisions for mutual legal assistance, extradition treaties and human rights laws; for that purpose, constitutional amendments sometimes had to be made, which required technical and legal expertise and financial resources. Those demands would no doubt slow down the process of signing, ratification and entry into force. It was therefore not enough just to urge countries to sign and ratify the Statute: what was needed was a collective effort to cooperate in providing them with technical and financial support and assistance. The Community welcomed the steps already taken to help States in that process and proposed that a trust fund should be set up for that purpose.

18. The remaining issues on the agenda of the Preparatory Commission — the relationship agreement between the Court and the United Nations, the Court's privileges and immunities, the budget for the first financial year and the rules of procedure of the Assembly of States Parties — were also important, as was the need to make progress on the crime of aggression.

19. It must be made easier for as many countries as possible, especially developing countries and the least developed countries, to participate in the Commission's work. Holding two sessions a year, with each session lasting a fortnight, would maximize participation. In addition, financial resources were needed to enable delegations from the developing countries and the least developed countries to take part in the deliberations on the outstanding issues. As far as possible, the concerns of small and medium-sized delegations should be taken into account in scheduling the meetings.

20. The Community hoped that future sessions of the Commission would continue to be characterized by a spirit of cooperation, a businesslike approach and a constructive atmosphere.

21. **Mr. Qu** Wensheng (China) said that the adoption of the Elements of Crimes and the Rules of Procedure and Evidence before the deadline and after a year of hard work provided a solid foundation for the smooth functioning of the International Criminal Court in the future. With regard to the Elements of Crimes, although during the Rome Conference his delegation had expressed reservations on the definition of some crimes, it had shown great flexibility and a constructive spirit during the preparatory process and had joined the consensus, acknowledging the work carried out by the Preparatory Commission and believing that, on the whole, a certain degree of balance had been struck, with the interests of all parties being taken into account. When the document was used as a guide to help the Court interpret and apply the provisions of the

Statute, the latter must be observed in both letter and spirit.

22. With regard to the Rules of Procedure and Evidence, while the incorporation of features from various legal systems had resulted in relatively balanced provisions on the rights and obligations of the parties concerned, his delegation had reservations about the discretionary powers granted to the Court in some matters. If abuses were to be avoided, the Rules of Procedure and Evidence must be consistent with the Statute and, where the two instruments clashed, the Statute must take precedence.

23. In its future work, the Preparatory Commission should continue to observe the letter and spirit of the Statute and respect its stability and integrity. Any amendment to the Statute that violated normal procedure would pose problems for the States that were or were about to become parties to it, and would further undermine the confidence of the countries that already had misgivings about the Statute. The Working Group on the Crime of Aggression had made progress in drafting a consolidated text and provisional questionnaire. The question that attracted the most attention in defining that crime, namely, the role of the Security Council, should be approached cautiously and pragmatically, bearing in mind the need to proceed on a basis of consensus. His delegation was ready to work with the other delegations to reach a pragmatic and satisfactory outcome.

24. **Mr. Scheffer** (United States of America) said that his delegation had participated actively in the negotiations leading to the adoption of the Elements of Crimes and the Rules of Procedure and Evidence, and was pleased to have been able to join the consensus on those matters. The two instruments would stand the test of time because they were consistent with customary international law and due process.

25. It was a matter of concern that the behaviour of some nations still did not live up to the principles reflected in the Rome treaty and that there continued to be some reluctance to address properly the serious violations of international humanitarian law that were taking place. The International Criminal Court would have no jurisdiction over those crimes. Nevertheless, his delegation strongly supported those States that recognized their obligation to bring to justice in their courts those individuals who committed crimes that violated international humanitarian law.

26. If the International Criminal Court was to function efficiently and the United States was to cooperate closely with it, the Preparatory Commission must resolve a fundamental question at its November session. His delegation believed that, unless there was a referral to the Court under article 13 (b) of the Statute, there should be a means to preclude the automatic surrender to the Court of official personnel from a non-party State that acted responsibly in the international community and was willing to exercise, and was capable of exercising, complementarity with respect to its personnel. That would leave the door open for the United States to cooperate with the Court, without harming the fair and efficient functioning of the latter or undermining in any way the integrity of the Rome treaty. A clear articulation of the procedure was needed to give non-party States confidence that the Court would respect their good faith performance. That would encourage non-party States wishing to contribute responsibly to international peace and security, and that confidence in the fairness of the treaty regime would, over time, encourage more Governments to become parties to the treaty.

27. Achieving workable arrangements during the Preparatory Commission talks in November would enable the United States to cooperate with the Court in several areas, and in the future, it might even be able to consider becoming a party to the Rome treaty. If a workable arrangement could not be negotiated at the next Preparatory Commission session, however, it was to be feared that his country would have a much more difficult relationship with the Court. Moreover, a negative result at the next session could have a major impact on the ability of non-party States to participate in certain types of military contingencies, including those with critical humanitarian implications. Overall support for the Court would be diminished, and the legitimacy of certain of its actions would be questioned by the very non-party States that otherwise would find good reason to support it. That need not be the case if reasonable terms were arrived at in the Preparatory Commission.

28. **Mr. Kanu** (Sierra Leone) said that his country had been one of the first to sign and ratify the Rome Statute, thus demonstrating the importance it attributed to the establishment of the Court. Since the Statute had been ratified by over 20 States and 60 ratifications were needed for it to enter into force, his delegation urged States that had not done so to ratify the Statute as

soon as possible, avoiding any direct or indirect changes that might vitiate its content. Had the Court been functioning, it would not have been necessary for the Security Council to adopt resolution 1315 (2000), in which it requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create a special court to try persons who had committed serious violations of international humanitarian law in Sierra Leone.

29. A comprehensive definition of the crime of aggression should be adopted. In any case, Sierra Leone believed that certain activities by some of its neighbouring States constituted the crime of aggression, however it might be defined.

30. With regard to the question of child soldiers, in many countries minors under 18 years of age were tried for crimes. It had been proposed that, as in the case of Rwanda, the special court for Sierra Leone should try minors who had been between 15 and 18 years of age when they committed the alleged crimes, since that was important for the purposes of deterrence and reconciliation. His delegation gave assurances that, if child soldiers were put on trial, they would be treated with dignity, taking into account their age and the desirability of promoting their rehabilitation and reintegration into society.

31. **Mr. Mirzaee-Yengejeh** (Islamic Republic of Iran) said that the Elements of Crimes would add clarity to a number of definitions contained in the Statute of the Court. Together with the Rules of Procedure and Evidence, they would facilitate the work of the judges. Since the Statute was the basic constituent instrument of the future Court, all rules concerning the jurisdiction and functions of the Court, such as the Rules of Procedure and Evidence and the Elements of Crimes, must be in conformity with the Statute. In cases of discrepancy, the Statute should prevail.

32. As a member of the Movement of Non-Aligned Countries, his country attached great importance to the definition of the crime of aggression. Progress on that topic would facilitate the ratification of the Statute by many States and ultimately its universal acceptance. There were two complementary texts that should be considered together: the consolidated text of proposals on the crime of aggression and the preliminary list of possible issues relating to the crime of aggression. Although the second of those texts might help to eliminate discrepancies in regard to certain key aspects of the definition of the crime of aggression, it also dealt with questions outside the mandate of the Preparatory Commission. In accordance with the Rome Statute and resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the Court should not have separate jurisdiction with regard to the crime of aggression. His delegation favoured a general definition of the crime of aggression, accompanied by a non-exhaustive list of acts; both could be based on General Assembly resolution 3314 (XXIX) of 14 December 1974.

33. With regard to the relationship between the Court and the Security Council, it should be borne in mind that under Article 39 of the Charter of the United Nations the Security Council had primary responsibility for determining the existence of an act of aggression. Therefore, a balanced provision should be adopted to provide for those cases in which the Security Council, for political reasons, did not determine that aggression had been committed. It had been proposed that the General Assembly, the International Court of Justice or the International Criminal Court should assume the role of the Security Council in that regard. Although his delegation could accept the attribution of that function to any of the bodies indicated, it would prefer that the International Criminal Court should determine the existence of an act of aggression when the Security Council failed to do so.

34. **Mr. Vámos-Goldman** (Canada) said that signatures and ratifications of the Statute of the Court were proceeding at a good pace, and the topic had been given special attention in the Millennium Declaration. To help bring the Statute into force as soon as possible, Canada had launched a campaign to promote signature, ratification and implementation of the Statute. In that regard, it should be borne in mind that the Statute did not allow for reservations and that meant that interpretative declarations inconsistent with the Statute would be without effect. Canada, which had ratified the Statute on 7 July 2000, had in December 1999 passed the Crimes against Humanity and War Crimes Act to bring its legislation into line with the provisions of the Statute.

35. The adoption by the Preparatory Commission in June 2000 of the finalized draft texts of the Rules of Procedure and Evidence and the Elements of Crimes

should facilitate the start-up of the Court's operations. The fact that they had been adopted by consensus was an indication of the growing acceptance of the idea of the Court, despite the hesitation of some countries. Canada would continue to try to find acceptable ways to address the legitimate concerns of such countries, without, however, undermining the integrity of the Statute or the effectiveness of the Court. Nevertheless, exemption of any particular State from the jurisdiction of the Court could not be permitted, since it would be incompatible with the Statute and with the fundamental precepts of international law. On the other hand, the Statute itself, the Rules of Procedure and Evidence and the Elements of Crimes would provide safeguards against frivolous prosecutions or other such abuses.

36. **Mr. Hoffmann** (South Africa) said it was vital for the Preparatory Commission to be given adequate time and facilities for it to accomplish its mandate, because there were still important documents to be discussed, including those on the Relationship Agreement between the Court and the United Nations, the basic principles governing the Headquarters Agreement to be negotiated between the Court and the host country, the detailed Financial Regulations and Rules, the Agreement on the Privileges and Immunities of the Court, the budget for the first financial year, the rules of procedure of the Assembly of States Parties and the proposals for defining the crime of aggression and the conditions for the exercise of the Court's competence concerning that crime.

37. South Africa urged States which had not done so to sign the Rome Statute before the end of the year, and to ratify it thereafter. South Africa's national executive had already approved incorporation of the Statute into South African law, and a parliamentary committee had begun to consider ratification, which was expected to take place during the current parliamentary year. Thus South Africa would join the other African States which were already parties to the Statute.

38. Lastly, he was still concerned about the attempts by some States to exempt nationals of certain States from the jurisdictional ambit of the International Criminal Court. South Africa would not support any attempts of that kind, and he hoped that States which still had misgivings about the jurisdiction of the Court would reconsider their positions, sign the Rome Statute before the closing date, and then ratify it.

39. **Mr. Brattskar** (Norway) said the Rome Statute provided for an independent, effective and credible Court with a very wide basis of support. For the first time, there would be written rules of international law on a wide-ranging number of issues, as a result enhancing legal predictability and certainty, and offering reliable safeguards against arbitrary and politically motivated prosecutions. The Statute also provided for important procedural safeguards, for instance to protect sensitive military or other information. Moreover, through the principle of complementarity with national jurisdictions the Court would serve as a safety net in cases where the national authorities were negligent in their judicial procedures.

40. As a result of the 1998 Diplomatic Conference and the adoption during the past year of the draft Rules of Procedure and Evidence and the Elements of Crimes, the goal of establishing an international criminal court was coming closer. The decisions taken by consensus by the Preparatory Commission were another important stage in that process. However, there were still many basic instruments to be considered, such as the detailed Financial Regulations and Rules of the Court, the Relationship Agreement between the Court and the United Nations, the basic principles governing the Headquarters Agreement, the Agreement on the Privileges and Immunities of the Court, the budget for the first year of operation, and a text on the crime of aggression which would be universally acceptable. In the final instance, attaining the goal would depend on a sufficient number of States ratifying the Statute, and so at the current stage every effort must be directed to activating national procedures for signature and ratification. It was encouraging to see that the number of signatures and ratifications was increasing rapidly. He supported the appeal by the Secretary-General of the United Nations to States to sign the Statute before the end of the current year, and reiterated that his country was prepared to share information about its ratification process with all interested States.

41. The important work being carried out by many non-governmental organizations deserved recognition, especially their efforts in disseminating information about the Court and organizing awareness-raising campaigns in order to secure its early establishment.

42. During the Millennium Summit, His Majesty King Harald of Norway had declared that conflicts must be prevented whenever possible, peace

encouraged and the United Nations given power to punish genocide, war crimes and crimes against humanity. Statements in a similar vein had been made by the Prime Minister of Norway at the Summit and by its Minister for Foreign Affairs at the General Assembly debate on 14 September 2000.

The meeting rose at noon.

United Nations A/C.6/55/SR.10

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Chairman: Mr. Suheimat (Vice-Chairman) ..... (Jordan)

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In the absence of the Chairman, Mr. Suheimat (Jordan), Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

Agenda item 156: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/55/164 and Add.1 and 2)

1. **Mr. Alabrune** (France), speaking on behalf of the European Union and Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey, said that the Secretary-General's report (A/55/164 and Add.1 and 2) showed that the need to reassert the principles of international law relating to diplomatic and consular relations was as pertinent as ever. Any diminution of the effective protection of diplomatic and consular staff would endanger the objective of establishing relations of trust among nations and concord among peoples. The European Union would participate in all efforts aimed at guaranteeing and strengthening the right of such staff to protection and security. It therefore considered it would be very useful to adopt a resolution similar to General Assembly resolution 53/97 calling on States, particularly host States, to implement the relevant provisions of international law. The European Union welcomed the growing number of accessions to the relevant multilateral instruments but considered that the latter deserved universal acceptance. It therefore called on States which were not parties to accede to them with all speed.

2. **Ms. Lind** (Norway), speaking also on behalf of Denmark, Finland, Iceland, and Sweden, welcomed the fact that the General Assembly continued to consider the agenda item, which the Nordic countries had introduced in 1980, on a regular basis. The need to protect the representatives of States had been recognized for many centuries, in all cultures and legal systems. Host States were under an obligation to provide such protection, which was a basic prerequisite for the normal conduct of relations among States. The aim was to protect the channels of communication between States, not particular individuals, and to ensure the maintenance of international peace and security. By the same token, diplomatic and consular representatives should respect the laws and regulations of the host State.

3. The Nordic countries strongly condemned acts of violence against diplomatic and consular representatives and representatives and officials of international intergovernmental organizations. They particularly deplored incidents in which innocent lives had been taken or endangered. Continued awareness and precautionary measures were still needed in order to enhance the security of personnel and the unhindered conduct of diplomatic and consular relations. Close cooperation between sending and receiving States was needed. The Nordic countries appealed to all States that had not done so to become parties to the relevant international legal instruments. They also stressed the importance of the procedures for reporting violations of the protection of diplomatic and consular premises and personnel, in accordance with the guidelines set out in the relevant General Assembly resolutions.

4. **Mr. Uykur** (Turkey) said that his delegation, which aligned itself with the statement on behalf of the European Union, attached particular importance to the agenda item. His country was a party to the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, which indicated its commitment to the regular conduct of international relations. Turkish diplomats, however, had been especially subject to terrorist attacks, and increasingly since 1974, yet the perpetrators had been tolerated in some countries for reasons of political expediency. Some of those countries had reviewed their policies only after their own citizens had suffered similar attacks. In some cases, States had attributed the terrorist acts to organizations whose existence and members — if any — had never been traced. The protection provided by some States to Turkish missions and representatives did not correspond to the nature of the threat and therefore called into question their will to combat crimes against diplomatic and consular representatives. The provision of protection was both a legal and a moral requirement. States should use the reporting mechanism established pursuant to General Assembly resolution 35/168, and elaborated in subsequent resolutions, to report any serious violations of the security and safety of diplomats, giving a clear picture of measures taken and results achieved. He called on all States parties to comply with their obligations under the various conventions and refrain

from treating such crimes selectively on the basis of narrow policy considerations.

5. **Ms. Álvarez Núñez** (Cuba) said that her delegation unequivocally condemned all attacks against diplomatic and consular representatives throughout the world, since they violated the relevant principles of international law. In that context her delegation noted with concern the letters addressed to the President of the Security Council by the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations (S/2000/102 and S/2000/765). The Vienna Convention on Diplomatic Relations should be respected, and the Committee's consideration of the agenda item would go far to encourage such respect. She also urged all Member States to accede to the relevant Conventions, particularly the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. In that connection, her delegation believed that the scope of the Secretary-General's report should be extended to include all the multilateral instruments relating to diplomatic immunities and prerogatives and diplomatic and consular relations.

6. **Mr. Fadaifard** (Islamic Republic of Iran) said that, despite the various General Assembly resolutions and the relevant international conventions, several instances of violence against the premises of diplomatic and consular missions and their personnel had unfortunately occurred over the past two years. The recent terrorist attack against the United Kingdom embassy in Yemen was the latest indication that threats of such violence had not abated. It was a matter of concern that in certain cases the perpetrators of such heinous crimes had yet to be brought to justice. Iranian diplomats had been the targets of many incidents over the years. Of particular concern was the case of the Iranian Chargé d'affaires in Beirut, who had been abducted in 1982, together with three embassy staff members. Since then no credible information as to their fate had been received. There was every reason to believe that they were still alive and in captivity. The anguish of their families could well be imagined. A more recent case concerned the massacre of all the staff of the Consulate General, together with an Iranian journalist, by Taliban forces in Mazar-e-Sharif in August 1998. The Taliban leaders had yet to heed the demand of the international community that they cooperate with the United Nations in investigating that barbaric crime with a view to bringing the perpetrators to justice. His delegation urged all States to comply with their treaty obligations to prosecute those responsible for such crimes. The reporting mechanism established by General Assembly resolution 42/154 had proved its usefulness and should continue to be applied.

7. **Mr. Sheikh** (Saudi Arabia) said that his country regarded the protection, security and safety of the diplomatic missions in its territory as a patriotic and religious duty. The local authorities took care to protect diplomatic and consular missions, the missions of international organizations and their representatives and staff in accordance with the principles of international law and the relevant international conventions. His Government also attached particular importance to ensuring that diplomatic missions in Saudi Arabia were able to perform their duties in a secure and safe environment, to which end an entire section of Riyadh offering the requisite services had been set aside. The security authorities responded positively to requests from diplomatic missions for heightened security measures and took the necessary steps to forestall any illegal activities which might affect the security and safety of such missions. Consequently, no attacks on foreign missions or their staff had taken place and their work had not been impeded.

8. **Mr. Krokhmal** (Ukraine) said that the privileges and immunities of diplomatic and consular missions and their staff were intended not for personal benefit but to ensure the unhindered exercise of their functions. The relevant international legal regime should therefore be enhanced. His delegation called on all States that had not yet done so to accede to the relevant international instruments as soon as possible. States should have in place an effective mechanism, including preventive measures, to prevent acts of violence against diplomatic and consular missions and representatives and to bring the perpetrators of such acts to justice. His delegation supported all the practical measures undertaken by States to prevent and prohibit in their territories the activities of persons or organizations that encouraged, organized or engaged in the perpetration of such acts.

9. **Mr. Al-Dailmi** (Yemen) expressed agreement with much of what had been said by previous speakers. His Government strongly condemned all acts of violence or terrorism, whatever their target or source, and deeply regretted the attack against the United

Kingdom Embassy in Sana'a. The authorities had taken appropriate measures to investigate that criminal act and would do all in its power to prosecute those responsible.

Other matters

10. **Ms. Álvarez Núñez** (Cuba) suggested that the Fifth Committee should engage in discussions with the other relevant Committees on the criteria for the proposed medium-term plan for the period 2002-2005. Specifically, it would be useful to discuss programme 5, Legal affairs, for although the methodology of the medium-term plans was satisfactory the language used was becoming oversimplified or inappropriate, at least in relation to matters affecting the Sixth Committee. At times General Assembly mandates were not fully reflected.

11. After a procedural discussion, in which **Ms. Álvarez Núñez** (Cuba), **Ms. Willson** (United States of America) and **Mr. Manongi** (United Republic of Tanzania) took part, the Chairman suggested that the representative of Cuba should submit her delegation's comments in writing. He would pass them to the Chairman of the Fifth Committee. If time permitted, a meeting between the two Committees might be arranged.

12. *It was so decided.*

The meeting rose at 4.10 p.m.